

IN THE COURT OF COMMON PLEAS OF CARBON COUNTY, PENNSYLVANIA

CIVIL DIVISION

MARCOS SANCHEZ, M.D., :
 :
 Plaintiff :
 :
 Vs. : No. 11-0247
 :
 MEHDI NIKPARVAR, M.D. and :
 INCARE, LLC, :
 Defendants :

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CARBON COUNTY
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SUPPLEMENTAL MEMORANDUM OPINION

Matika, J. - April 24, 2018

This supplemental opinion is in response to the directive of the Superior Court which granted the amended application of Appellant, Mehdi Nikparvar, M.D. (hereinafter "Nikparvar") for an enlargement of time to conduct a hearing on whether Nunc Pro Tunc Relief was warranted and which further required this Court to conduct a hearing within thirty (30) days. For the reasons explained herein, this Court is once again constrained to deny such requested relief.

FACTUAL AND PROCEDURAL BACKGROUND

On March 19, 2018, Nikparvar's amended application, for an enlargement of time to conduct a hearing to address whether nunc pro tunc relief should be granted permitting Nikparvar to file a concise statement pursuant to Pennsylvania Rule of Appellate

Procedure 1925(b) was granted and filed in the Superior Court. This Order required the Trial Court to conduct a hearing within thirty (30) days on "whether nunc pro tunc relief is warranted concerning the filing of the Appellant's Concise Statement." This Order also directed the Trial Court to "schedule the Appellant's deposition at the Philadelphia Detention Center."

Upon receipt, this Court issued an Order scheduling a hearing to address the issue of the scheduling of the deposition and also directed counsel to communicate prior thereto in an attempt to agree on a date themselves. Prior to the scheduled hearing, Counsel informed the Court that a deposition was mutually agreed to and would be taking place in the near future. Consequently, the Court, seeing no need for the March 29, 2018 hearing for the purpose of scheduling the deposition of Nikparvar, continued that hearing until April 19, 2018¹ with the intent to utilize that hearing for the creation of the record to determine whether nunc pro tunc relief should be granted.

On or about April 17, 2018, Plaintiff's Counsel, Steve Bergstein, Esquire sought a last-minute continuance of the April 19, 2018 hearing due to a family funeral. In the correspondence to the Court, a copy of which was sent to opposing Counsel,

¹ While this date, April 19, 2018, was outside the thirty (30) days prescribed in the March 19, 2018 Order it was the only date available to the Court.

Attorney Bergstein notified the Court that the deposition did not take place as previously noticed.

On April 19, 2018, the unopposed continuance request of Plaintiff was granted due to Counsel's unavailability. The hearing originally scheduled on April 19, 2018 was moved to April 24, 2018 but subsequently moved to April 23, 2018 due to Counsel for Nikparvar, Attorney Donald Moser's unavailability on April 24, 2018.

At the hearing held on April 23, 2018, Counsel for Nikparvar presented no testimony, evidence or deposition transcript. Instead, he sought to explain why the deposition scheduled for April 16, 2018 did not occur. Attorney Moser explained that the federal authorities cancelled the April 16, 2018 deposition at the Philadelphia Federal Prison as the result of the Court Reporter's failure to apply for admittance to that prison at least one (1) week prior thereto.²

LEGAL DISCUSSION

Per the directives of the Superior Court Order of March 19,

² In response to Attorney Bergstein's continuance request correspondence to the Court of April 17, 2018 which also outlined that the deposition had been cancelled, Attorney Moser sent correspondence to the undersigned and opposing counsel explaining that the Philadelphia Federal Prison had a policy that at least one (1) week prior to admittance the Court Reporter was required to file an application for permission to appear.

2018, this Court was given thirty (30) days to conduct a hearing on the nunc pro tunc request of Nikparvar regarding the filing of his concise statement. Notwithstanding the fact that the original date for this particular hearing was five (5) days past that deadline (hearing held on April 23, 2018), Appellant had failed to conduct the deposition as noticed. Without any factual basis as to why the Concise Statement was not timely filed in the first instance, namely by November 9, 2017, this Court is constrained to once again deny Nikparvar's request to file this concise statement nunc pro tunc.

CONCLUSION

Based upon the foregoing, this Court respectfully requests this Honorable Appellate Court to dismiss the Appeal with finality.

BY THE COURT:



Joseph J. Matika, Judge